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**Diplomacy in Action**

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COMBATING GLOBAL CORRUPTION  
(FCPA ENFORCEMENT)**

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### U.S. Strategic Leadership Guidance



#### *Combating Global Corruption and Transnational Threats*

“No country is going to create wealth if its leaders exploit the economy to enrich themselves or if police can be bought off by drug traffickers .... People everywhere should have the right to start a business or get an education without paying a bribe. We have a responsibility to support those who act responsibly and to isolate those who don't, and that is exactly what America will do.”

**-- President Barack Obama**

“As we work together to eradicate corruption in our own countries, we should also maintain the highest standards of transparency and accountability in our development efforts around the world. Corruption in emerging markets and fragile democracies undermines the confidence of citizens and investors alike, while responsible governance helps to foster sustainable economic development and political stability.”

**-- Secretary of State Hillary Rodham Clinton**



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## **Global Corruption: Impacts to U.S. National Security**

- Corruption threatens democracy, development, defense (security).
- Corruption jeopardizes the integrity of world markets, the stability of political systems, and the security of the international community. It impedes efforts to promote freedom and democracy, stymies economic growth and foreign investment, and saps energies from innovation, competitiveness, and entrepreneurial and technological advancement strategies.
- Corruption facilitates transnational crime and terrorism, destabilizes communities, and casts shadows of lawlessness that erode public trust and the rule of law.
- Corruption robs nations of their future and people of their dreams by misappropriating public investment away from development areas that need it most, such as public sector modernization, infrastructure and social development including quality access to water, sanitation, education, healthcare, and housing.



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### Smart Power Diplomacy: Combating Global Corruption

To make headway against transnational kleptocratic-criminal networks, we are enhancing international cooperation to strengthen the political will to dismantle their infrastructure and combat the threats that they pose -- not only through law enforcement efforts, but also by building up governance, anti-corruption, and rule of law capacities, crime-prevention and youth programs, criminal justice reform, and strengthening good governance and accountability efforts.

These goals are being advanced through:

- (1) the practical implementation of ground-breaking conventions and protocols that define and promote internationally-agreed standards and create roadmaps for domestic implementation;
- (2) the use of a broad range of bilateral, regional, and global training and technical assistance programs aimed at strengthening our foreign partners' law enforcement and criminal justice capacity to implement those shared standards and best practices, and the political will to combat global corruption;
- (3) information-sharing and leveraging unity of efforts to prevent, investigate and prosecute corruption;
- (4) strengthening international cooperation in key multilateral fora; and
- (5) the strengthening of public-private partnerships with the business and NGO communities.



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### International Anti-Corruption/Anti-Crime Architecture

In recent years, the international community has developed important new diplomatic efforts, enforcement tools, and ground-breaking conventions and protocols that provide us with a comprehensive arsenal of capabilities and a framework for cooperation among bodies that combat global corruption:

- G8/G20 Process/Summits
- UN Convention Against Corruption (UNCAC)
- UN Convention against Transnational Organized Crime (UNTOC)
- OECD Anti-Bribery Convention; OECD Principles of Corporate Governance
- Financial Action Task Force on Money Laundering (FATF) and FATF-Regional Style Bodies (FRSBs)
- **Multilateral and Regional Partners:** Organization of American States (OAS): Inter-American Convention Against Corruption; Asia Pacific Economic Forum (APEC): Anticorruption and Transparency Task Force; ADB/OECD Anticorruption Initiative for the Asia Pacific Region; South Eastern Europe Regional Anticorruption Initiative (SEE) –Stability Pact; Council of Europe: Group of States Against Corruption (GRECO); League of Arab States, in partnership with OECD and UNDP: Anticorruption and Integrity Network (ACiNET), African Union (AU), INTERPOL, United Nations Office of Drugs and Crime (UNODC), the World Bank, other multilateral and regional organizations and civil society groups and private sector partners..



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## UN Convention Against Corruption

Working with other partners, the United States helped to successfully negotiate the first comprehensive, near global treaty against corruption, the United Nations Convention against Corruption (UNCAC).

This Convention not only obligates 143 States Parties, to criminalize the bribery of foreign public officials. It complements and goes beyond the OECD instrument by covering a much broader range of offenses.

It requires criminalization of other corrupt conduct, including money laundering, and contains groundbreaking road maps for measures to prevent corruption and to recover assets illicitly acquired by corrupt leaders.

Almost as important as setting near global rules to bring the rest of the world up to U.S. standards, UNCAC establishes an international framework for countries to cooperate through mutual legal assistance and mechanisms to expand extradition to fight corruption.

The U.S. Government supports and promotes implementation of the UNCAC in programs and initiatives throughout the world.



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### UNCAC and Anti-Bribery Provisions

- UNCAC reinforces the main provisions and concepts of the FCPA and the OECD Convention, and is a vehicle to ensure that these important standards are adopted globally (140+ UNCAC parties versus the 40+ OECD parties).

The main provisions of UNCAC, which are analogous to those of the OECD Convention, are:

**Article 16(a)** of UNCAC requires parties to criminalize bribes to foreign government officials for the purpose of obtaining or retaining business. Again, while not exactly identical to FCPA and OECD, we have determined that FCPA satisfies our requirements as a party.

**Article 12(3)** of UNCAC essentially replicates the books and records provisions of OECD and FCPA, requiring parties to take measures to regulate accounting of private companies to deter bribery.

**Article 26** of UNCAC essentially replicates the OECD requirement that parties establish liability for legal persons (i.e. – corporations) that are involved in bribery.

UNCAC also mirrors many of the other OECD provisions that help implement the crime of bribery, including allowing for MLA, extradition and other law enforcement cooperation on bribery and other corruption crimes (Articles 44-48), allowing for a long statute of limitations period (Article 29), and confiscation of proceeds of crime (Article 31).



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### UNCAC and Anti-Bribery Provisions

There are obviously UNCAC provisions beyond OECD in certain areas. Some quick examples:

- **Article 12(4)** of UNCAC directly requires States to disallow the tax deductibility of bribes, which goes beyond what is required in OECD.
  - **Chapter V** of UNCAC sets out an innovative international framework for recovering proceeds of corruption/bribes that are stowed abroad.
  - Other parts of **Article 12** of UNCAC cover additional aspects of ensuring integrity in the private sector.
- **How does this relate to enforcement?** The UNCAC is another vehicle which commits governments to the OECD-like commitments (and more) and encourages Parties to take action. New UNCAC review mechanism may also be a useful vehicle to expose a lack of action on these issues and push countries to enforce. First round of reviews for UNCAC will include, among other things, bribery of foreign officials and international cooperation.



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# PP7750: Putting Kleptocrats on Notice

- Another key tool in our strategies to deny safe havens to kleptocrats is Presidential Proclamation 7750, issued on January 12, 2004, that allows the United States to deny or revoke visas to individuals involved in public corruption, those who bribe them, and certain family members of either group, that has serious adverse effects on specific U.S. interests, including: (1) the international economic activity of U.S. businesses, (2) U.S. foreign assistance goals, (3) the security of the United States against transnational crime and terrorism, or (4) the stability of democratic nations and institutions.
- The United States is engaged internationally to protect the financial system from abuse by those who would launder the proceeds of foreign official corruption and to identify, trace, freeze, recover, and repatriate such illicitly acquired assets.
- Stolen Asset Recovery (StAR) Initiative (World Bank and UNODC); International Centre on Asset Recovery (Basel Institute).



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### Threat Convergence: Dismantling Transnational Illicit Networks

*“In recent years, the world has seen a convergence of transnational threats and networks, which are more dangerous and destabilizing than ever. These threats and networks are becoming more fluid and sophisticated; are able to cross borders; and involve elements of international organized crime, particularly illicit finance and trafficking in drugs, arms and persons. This can undermine stability and security, fuel violence and corruption, weaken the rule of law, and subvert legitimate economies. Addressing these 21<sup>st</sup> century transnational threats is an important priority of the United States.”*

**--President Barack Obama**

- When criminal and illicit actors and networks converge, they expose their memberships and operating procedures to greater scrutiny, and potential vulnerability. At the intersection of illicit nodes, we can better follow the leads, track financial flows, uncover corrupt channels, and understand the interconnected links between organized crime and other threats, and to unravel the web of criminality and corruption that often runs through the illicit underworld.

- **Corruption, Crime and Terrorism: The Unholy Trinity.** Preventing corruption is a key to combating emerging transnational criminal threats. Today, criminals and other illicit actors imperil the functioning and legitimacy of the state when they harness public institutions to facilitate their illicit activities and create a culture of impunity. In the most extreme cases, they subvert and undermine state functions to a point that official institutions become a de facto criminal enterprise. Poor governance and corrupt officials in many parts of the world enable criminals, insurgents, and terrorists to operate with impunity.



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## Corruption and the Illicit Trade

- Increasingly, illicit activities across the borders, markets, and communities around the world not only adversely impact our joint security and economic health but contribute to a thriving illicit underworld operated by powerful and violent criminal and kleptocratic networks.
- These illicit criminal-kleptocratic pathways pose an immediate threat to public trust, and core democratic and free market values, especially in the midst of one of the most serious global economic and financial crises in decades.
- Enterprising illicit actors are smuggling billions of dollars of illegal goods into our jurisdictions – from trafficking in drugs, arms, humans, natural resources and endangered wildlife parts to the smuggling of counterfeit medicines, tainted and substandard goods, and pirated software, to the laundering of embezzled public funds – creating insecurity, costing our economies jobs and tax revenue, endangering the welfare and safety of our families and communities, and effectively bypassing law enforcement countermeasures.
- Combat converging threats and the illicit trade by combining joint efforts against crime and corruption across the Asia Pacific region, and around the world, developing strong law enforcement approaches, and enhancing our cooperation through public-private partnerships.



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### Narco-Corruption

- In places like **West Africa**, we now see how increased drug flows from Latin America, kidnappings, and other crimes produce opportunities for criminal groups that might sympathize with Al Qaeda to tap into the wealth generated by narcotics trafficking and other illicit activities to fund their operations. Last December, for example, US prosecutors in the Southern District of New York charged three men who claimed to be Al Qaeda associates with conspiracy to smuggle cocaine through Africa. In the **Horn of Africa**, we are seeing illicit routes established by criminal groups to smuggle immigrants, arms, narcotics and other contraband, and know these illicit activities will create opportunities for terrorist groups to exploit
- In **Afghanistan**, we have long known that among the Taliban's funding sources included informal taxes on heroin traffickers.
- **Colombia**: Two years ago, U.S. and Colombian investigators were able to dismantle an international cocaine-smuggling, alien smuggling, and money-laundering gang that funneled some of its profits to Hizballah, a U.S. designated Foreign Terrorist Organization.
- **Mexico**: The huge amount of money generated by the global drug trade enabled drug lords to corrupt police, customs and other public officials and establish structures and networks that can be used to facilitate other criminal activities and create a culture of lawlessness, violence, and impunity. Ongoing Merida Initiative between U.S. and Mexico is supporting efforts by the Government of Mexico to overcome this dangerous legacy.



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### Enhanced Capacity-Building: Democratic Accountability

The U.S. helps other governments to prevent corruption and increase transparency, improve good governance, combat money laundering, and prosecute transnational crime by providing technical assistance and training, and strengthening criminal justice systems and capacities of law enforcement agencies. Such assistance helps to enhance the ability of foreign governments to enhance public administration and to address their own crime challenges before these threats extend across international borders.

**Bureau for International Narcotics and Law Enforcement (INL) Affairs and INCLE Bilateral Technical Assistance:** INL's assistance programs help support capacity and training in areas related to police, investigators, prosecutors, judges, ethics offices, auditors, inspectors general, and other oversight, regulatory and law enforcement systems at the national and municipal levels of government. In partnership with USDOJ, INL helps to provide Resident Legal Advisors (RLAs) in some countries to help draft new laws, establish legal institutions, or share experience and techniques on prosecuting criminal cases. Establishment of International Law Enforcement Academies (ILEAs) around the world including bringing together countries.

(<http://www.state.gov/p/inl/>)



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## Diplomacy In Action

### Enhanced Capacity-Building: Democratic Accountability

The **United States Agency for International Development (USAID)** includes anticorruption efforts a central part of its foreign assistance strategy and takes a broad approach to assisting partner countries to strengthen their systems to resist corruption. USAID's anticorruption programs are designed to help reduce opportunities and incentives for corruption; support stronger and more independent judiciaries, legislatures, and oversight bodies; and promote independent media, civil society, and public education.

The **Millennium Challenge Corporation (MCC)** is providing a powerful incentive for governments to adopt tough anticorruption policies and strengthen their anticorruption institutions. In implementing the Millennium Challenge Account (MCA), the MCC works to lift people around the world out of poverty through economic growth and incentives for governance reform.

MCC offers grant assistance to developing countries that are willing to implement tough anticorruption reforms. As a result, countries are taking it upon themselves to pass stronger anticorruption laws, strengthen oversight institutions, open up the public policy-making process to greater public scrutiny, and step up corruption-related investigations and prosecutions.



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### CONCLUSION

- **Fighting Global Corruption:** Whole-of-Government Approach; Leveraging Networks.
- As Secretary of State Clinton has underscored that in order to “create the conditions for more peaceful, stable and prosperous regions of the world”, we need to fight corruption and employ full-spectrum capabilities and dynamic multi-disciplinary responses to strengthen the political will, dismantle the illicit architecture/pathways that run across the crime-corruption continuum, invest in sustainable economic development strategies for promoting economic growth and shared prosperity, strengthen rule-of-law, oversight, and enforcement systems; and support PPPs for market integrity (corporate governance-anticorruption compliance programs).
- President Obama is committed to a renewal of American leadership, a revitalization of our alliances, and a reinvigoration of international cooperation that is essential to promoting our interests and values in the 21st century.
- **Fighting corruption is an ongoing and deliberate process.** Working with all segments of society through synergies and partnerships, including governments, multilateral organizations and civil society, we can create a better future by continuing a united effort against corruption and building communities throughout the world where all individuals can be governed with the highest levels of integrity.



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**For more information on the topics discussed today please call:**

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